

**IN THE INDIANA COURT OF APPEALS
CASE NO. 93A02-1301-EX-76**

CITIZENS ACTION COALITION OF INDIANA, INC., et al.)

Appellants,)

v.)

DUKE ENERGY INDIANA, INC., et al.)

Appellees.)

Appeal from the Indiana Utility Regulatory Commission

**CAUSE NOS. 43114 IGCC-4,
43114 IGCC-4S1, 43114 IGCC-5,
43114 IGCC-6, 43114-IGCC-7,
and 43114 IGCC-8**

James D. Atterholt, Chairman
Kari A.E. Bennett, Commissioner
Larry S. Landis, Commissioner
Carolene Mays, Commissioner
David E. Ziegner, Commissioner
David E. Veleta, Administrative Law Judge

**MOTION FOR LEAVE TO APPEAR AS *AMICI CURIAE*
AND TO FILE BRIEF IN SUPPORT OF APPELLANTS**

Pursuant to Rule 41 of the Indiana Rules of Appellate Procedure, Citizens Coal Council, Earth Charter Indiana, Healthy Dubois County, Inc., the Hoosier Environmental Council, Hoosier Interfaith Power & Light, Indiana Distributed Energy Alliance, and the Indiana State Conference of the National Association for the Advancement of Colored People (collectively, "Movants") move for leave to appear as *amici curiae* and to file the proposed *amici curiae* brief, which accompanies this motion, in support of Citizens Action Coalition of Indiana, Inc., Save the Valley, Inc., Sierra Club and Valley Watch, Inc. (collectively, "Appellants"). In support of this motion, Movants state as follows:

1. On January 25, 2013, Appellants filed a Notice of Appeal from Final Orders of the Indiana Utility Regulatory Commission (the "Commission") in Cause Numbers 43114

IGCC-4, 43114 IGCC-4S1, 43114 IGCC-5, 43114 IGCC-6, 43114 IGCC-7, and 43114 IGCC-8.

Appellants' brief is due on or before September 9, 2013.

2. One of the issues presented by Appellants on appeal is whether the Commission erred in approving an extension of Duke Energy Indiana's ("Duke's") Certificate of Public Convenience and Necessity ("CPCN") for a new coal-gasification power plant in Edwardsport, Indiana (the "Plant") without making any findings of fact or conclusions of law on the need for mitigation of the risk to ratepayers from the over four million tons per year of carbon dioxide to be emitted by the Plant during its expected decades-long operating life.

3. Movants' organizations are aligned with Appellants and agree that the Commission erred in approving an extension of the Plant's CPCN without making any findings of fact or conclusions of law on the need to protect ratepayers through carbon dioxide mitigation.

4. Citizens Coal Council ("CCC") is a national alliance of social and environmental justice grassroots groups and individuals founded in 1989. CCC's mission is to inform, empower, and work for and with communities affected by the mining, processing, and use of coal. To this end, CCC advocates for the enforcement and strengthening of federal and state environmental laws and regulations as they relate to coal. CCC's work focuses on forcing the coal industry to internalize the environmental and social impacts caused by its operations. Given its experience with coal issues across the country and in Indiana, CCC is concerned that the approval of the Edwardsport project without any requirement that carbon dioxide emissions will be mitigated will result in ratepayers bearing the risks of a private company's imprudent investment in fossil fuel electric generation and will contribute to the environmental harms caused by coal mining, processing, and use, and by climate change.

5. Earth Charter Indiana (“ECI”) is an Indiana not-for-profit corporation with its principal office located at 3535 Kessler Boulevard, North Drive, Indianapolis, Indiana 46222. ECI’s mission is to inspire and advance sustainable, just, and peaceful living in Indiana by promoting the core values and principles of the Earth Charter—a declaration of fundamental principles for building a just, sustainable, and peaceful global society developed by an international commission in 2000. ECI has many members and supporters across the State. ECI’s primary programs include Sustainable Indiana 2016, a bicentennial initiative to showcase models of sustainability, connect individuals and organizations working for a more sustainable state, and provide educational programs on sustainable living, and Our Children’s Trust, a project to empower youth to use Indiana’s regulatory process to compel our government to implement a state-wide climate action plan that will ensure that future generations will have clean air, clean water, and a healthful environment. The Commission’s decision to approve the rate increase for the Edwardsport Plant is at odds with the Earth Charter principles to “accept that with the right to own, manage, and use natural resources comes the duty to prevent environmental harm and to protect the rights of people” (Principle 2.a) and to “adopt at all levels sustainable development plans and regulations that make environmental conservation and rehabilitation integral to all development initiatives” (Principle 5.a). Accordingly, ECI supports Appellants’ position that the Commission erred in approving Duke’s requested rate increase without a requirement for carbon risk mitigation.

6. Healthy Dubois County, Inc., (“HDC”) is a public benefit, not-for-profit organization whose mission is to advocate for the health and well being of the people of the Dubois County area. HDC opposes energy projects that shift financial risks from the sponsoring corporation and its investors to the County’s residents and ratepayers. HDC believes that energy

projects involving the use of public funds deserve the utmost transparency and scrutiny prior to a decision approving them being made and that risking Indiana ratepayer money for the benefit of a few investors, contractors, and employees is unethical and unhealthy for our County and State. HDC supports Appellants in this case because it believes that the Commission's approval of the investment of more than three billion in ratepayer dollars in additional coal-fired generation without any requirement that the financial risks to ratepayers from the emission of greenhouse gases be mitigated is imprudent and unlawful and because it does not believe that Indiana ratepayers should be forced to subsidize the risky investment of a multi-billion-dollar, Fortune 250 company.

7. The Hoosier Environmental Council ("HEC") is Indiana's largest non-for-profit environmental policy organization, with offices in Indianapolis, Lafayette, and Valparaiso. HEC aims to set a new path for Indiana, where the people of the State embrace practices and policies that dramatically reduce the footprint of industry, commerce, and agriculture on the environment in order to promote public health, economic well-being, and the preservation of nature for generations to come. HEC engages more than 10,000 Hoosiers on a regular basis, through its educational, advocacy and legal assistance programs. Clean energy represents one of HEC's three core focus areas, motivated by a desire for Indiana to simultaneously create new job opportunities in a growing global sector and to substantially reduce Indiana's greenhouse gas emissions. HEC has been especially focused on collaboratively advancing proven public policies, such as financing of Property Assessed Clean Energy, incentives for combined heat and power and for commercial-scale renewables, and net metering, to unleash more investment and create more jobs in climate-friendly sectors. HEC supports Appellants' position that the

Commission erred in approving Duke's requested rate increase without a requirement for carbon risk mitigation.

8. Hoosier Interfaith Power & Light (H-IPL) is a non-profit, non-partisan organization of more than 100 congregations and six regional affiliates in Indiana. H-IPL's mission is to bring Hoosiers of faith together as stewards of creation to promote energy conservation, energy efficiency, renewable energy, and related sustainable practices. Part of H-IPL's work involves advocating for public policies that move Indiana away from dependency on fossil fuels and that reduce pollution of God's good creation. H-IPL sees the Edwardsport Project as increasing rather than decreasing Indiana's dependency on fossil fuels, in this case coal, and believes that the Commission's approval of the investment of more than three billion in ratepayer dollars in additional coal-fired generation without any requirement that the financial risks to ratepayers from the emission of greenhouse gases be mitigated is imprudent and unlawful. H-IPL believes that the ratepayers in the congregations it represents should not be forced to subsidize the risky investment of a multi-billion-dollar, Fortune 250 company.

9. Indiana Distributed Energy Alliance, Inc. ("IndianaDG") is an Indiana non-profit corporation established for the purpose of promoting renewable energy resources and distributed generation in Indiana. IndianaDG works to achieve this mission by promoting renewable energy and distributed generation policies and programs that give consideration to customer owned electric-generating facilities, which present lower carbon risk and provide for greater flexibility and faster deployment of additional electric generation increments. More specifically, IndianaDG has been actively engaged in proceedings before the IURC to promote renewable energy resources and distributed generation through the adoption of voluntary feed-in tariffs. IndianaDG supports Appellants' appeal because it understands that the review of the decision to

invest billions of ratepayer dollars in fossil fuel electric generation must include an assessment of available alternatives including customer-owned renewable energy and distributed generation resources. While IndianaDG believes that Duke's failure to assess the full costs of the Edwardsport project resulted in an unfair comparison to other, less carbon-intensive options, it is not too late for Duke to take concrete steps to diversify its resource portfolio and thereby mitigate the serious financial risks that the company and its ratepayers face from future carbon regulation.

10. Indiana State Conference of the National Association for the Advancement of Colored People ("Indiana NAACP") is the umbrella organization of the 35 Indiana branches of the NAACP, the national civil rights organization dedicated to ensuring the political, educational, social, and economic equality of rights of all persons and to eliminate race-based discrimination. The NAACP recognizes that global climate change has a disproportionate impact on communities of color in the United States and around the world. In response to these impacts, the NAACP Climate Justice Initiative was created to educate and mobilize communities to address this human and civil rights issue. In its recent "Cold Blooded Report," the NAACP analyzed the air pollution emissions from coal-fired power plants across the country in conjunction with demographic factors—race, income, population density—of communities surrounding such plants. The report ranks power plants according to relative adverse impact on low income communities and communities of color. A Duke power plant in Indiana was ranked as one of the ten worst facilities in terms of environmental justice. Given the fact that the pollution and other harms caused by coal-fired power plants, including climate change impacts, will be borne disproportionately by low income communities and communities of color, the

Indiana NAACP supports Appellants' appeal in this case and opposes the approval of rate increases for the Edwardsport Plant absent mitigation of climate pollution risks.

11. In the Brief of Proposed *Amici Curiae* in Support of Appellants, submitted herewith, Movants—who collectively represent thousands of people across the State—present additional important information and argument that they believe will be helpful to the Court. Movants represent varied perspectives of local, state, and national organizations engaged in efforts to protect the health, environment, and economic well-being of Indiana communities from the threats of human-induced climate change. Movants' brief serves to frame the questions presented in this appeal within the broader context of the threats posed by climate change and explains why any prudent utility must mitigate its carbon dioxide emissions to protect its ratepayers from the regulatory risks associated with carbon pollution.

12. Pursuant to Rule 46(E)(2) of the Indiana Rules of Appellate Procedure, counsel for Movants have consulted with counsel for Appellants and have sought to avoid repetition or restatement the arguments made in Appellants brief.

For the foregoing reasons, Movants respectfully request leave to appear as *amici curiae* and for leave to file the accompanying Brief of Proposed *Amici Curiae* in Support of Appellants.

DATED: September 9, 2013

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of September, 2013, the "Motion for Leave to Appear as *Amici Curiae* and to File Brief in Support of Appellants" was served upon the following persons by first-class United States mail, postage prepaid:

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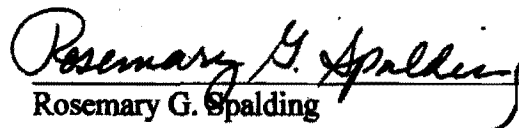
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